

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

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PIERCE COUNTY, et al.,	)	
	)	
Plaintiffs,	)	
	)	Cause No.
vs.	)	02-2-35125-5 SEA
	)	
STATE OF WASHINGTON, ET ANO,	)	
	)	
Defendants.	)	

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VERBATIM REPORT OF PROCEEDINGS

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HEARD BEFORE THE HONORABLE MARY I. YU

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July 21, 2004

APPEARANCES:

TOM AHEARNE, Attorney-at-Law, appearing on behalf of  
the plaintiffs, Pierce County, et al;

LINDA MORAN, Assistant Attorney General, appearing  
on behalf of the state of Washington and the  
Department of Licensing;

THOMAS KUFFEL, Attorney-at-Law, representing King  
County;

PAUL LAWRENCE, BOB ROWLEY and JAMES KLAUSER,  
Attorneys-at-Law, representing Defendant  
Intervenors;

WHEREUPON THE FOLLOWING PROCEEDINGS WERE HAD AND  
DONE, TO-WIT:

ORDERED BY: JAMES KLAUSER (206) 285-4445

REPORTED BY LADD A. SUTHERLAND, RPR, CSR,  
OFFICIAL COURT REPORTER

KING COUNTY SUPERIOR COURT

1 Wednesday, July 21, 2004; 1:32 PM

2

3 THE COURT: Good afternoon. Please be seated.

4 This is the matter of Pierce County versus the  
5 state of Washington, Cause No. 02-2-35125-5 filed in  
6 Seattle. And let me just have counsel introduce  
7 themselves for the record.

8 MR. ROWLEY: Bob Rowley for Intervenor.

9 MR. KLAUSER: Jim Klauser for the Intervenor  
10 Defendants.

11 MS. MORAN: Linda Moran, Assistant Attorney  
12 General, representing the state and Department of  
13 Licensing.

14 MR. BROWN: Desmond Brown, representing the  
15 Intervenor Sound Transit.

16 MR. LAWRENCE: Paul Lawrence for Sound Transit  
17 and the other Intervenor.

18 MR. KUFFEL: Tom Kuffel for the plaintiff.

19 MR. AHEARNE: Tom Ahearne for plaintiff.

20 THE COURT: Thank you, counsel.

21 We are here this afternoon following our last  
22 hearing where this court permitted the parties to  
23 explore the question of whether there is a legal  
24 basis for requiring that interest be paid on the  
25 vehicle licensing fees and taxes. The question was

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1 submitted in the form of an objection by Defendant  
2 Intervenor to the court's approval of the State's  
3 and Counties' approval for proceeding on such  
4 refunds.

5 Despite the attraction, at a very human level,  
6 of being paid interest on a refund and the promotion  
7 of true poetic justice for individual taxpayers,  
8 this court cannot take any action on the question  
9 without some basis in the law.

10 As a result at the last hearing and in a  
11 subsequent consultation with all counsel, this court  
12 allowed Defendant Intervenor additional time to  
13 outline for the court what the legal basis might be  
14 for the imposition of interest. The court conducted  
15 an abbreviated briefing schedule, and all such  
16 written submittals have been received and considered  
17 by the court.

18 As each of the parties know, the funds  
19 collected by the State on behalf of the Counties  
20 were collected pursuant to this court's order.  
21 Since there was specific authority at the time  
22 granted by the court for the ongoing collection of  
23 the fees while the matter was on appeal, they were  
24 not illegally collected. In fact, the risk assumed  
25 by the Counties if the Initiative was found to be

1 constitutional was the absorption of costs  
2 associated with such refunds. I take a moment to  
3 note the context because the legality or illegality  
4 of the collection of the funds does make a  
5 difference in the ultimate legal analysis.

6 The second point that bears on the question is  
7 whether there is any express statutory authority for  
8 awarding interest on the refund. It is this precise  
9 issue that the court asked Defendant Intervenors to  
10 research since, without it, this court generally has  
11 no authority to grant the relief.

12 As you know, established principles of  
13 constitutional law regarding sovereign immunity  
14 precludes the award of interest against the State,  
15 unless the State by statute or otherwise expresses  
16 its consent to waive that immunity.

17 The State argues that under the statutory  
18 framework of Title 46 (RCW 46.68.010), which the  
19 State maintains is controlling, there is no such  
20 express consent. Defendant Intervenors respond to  
21 the argument by maintaining that Title 46 does not  
22 apply, but they fail to delineate for the court what  
23 statutory provision does control or where this court  
24 can find the legal authority for awarding interest.  
25 The court does note that it appears that Defendant

1 Intervenor may have conceded the point when their  
2 argument shifted to requiring the counties or the  
3 larger Plaintiff group and not the State to pay the  
4 interest if this court were inclined to grant the  
5 request interest.

6 And frankly that argument begs two other  
7 questions:

8 1) whether there is any authority for  
9 authorizing the payment of interest by the counties  
10 when they are recognized as political subdivisions  
11 of the State which extends such immunity to those  
12 counties and where the funds collected were never  
13 transferred to the county, and

14 2) whether interest can be imposed against  
15 private entities and individuals who simply joined  
16 in the legal challenge of Initiative 776.

17 On the first point Defendant Intervenor have  
18 not provided the court with any legal authority re:  
19 the waiver of such immunity and how this court might  
20 get around that question or any other legal  
21 authority for awarding interest when the collection  
22 was undertaken pursuant to a court order.

23 In regard to the second point of shifting the  
24 payment of interest to the larger Plaintiff group,  
25 it is this court's conclusion that awarding interest

1       and then imposing those costs upon individual  
2       citizens or non-governmental entities who challenged  
3       the constitutionality of the Initiative is not  
4       legally sound and in fact would deter such  
5       individuals and organizations in other cases from  
6       challenging laws or their government.

7               It makes no sense to charge individual  
8       citizens with the payment of such interest, and  
9       there was no legal authority cited for the  
10      proposition.

11             This court is also mindful of the fact that  
12      the collected funds were not held in private  
13      interest-bearing accounts, and thus an award of  
14      interest would in fact place an additional burden on  
15      taxpayer funds.

16             Thus, in conclusion, after reading Defendant  
17      Intervenors briefs and responses thereto, I find  
18      that there is no legal basis for awarding interest  
19      on the vehicle license/gross vehicle weight refunds.  
20      This court will proceed to enter the order directing  
21      that the process for refunding the collected tax  
22      begin immediately. In approving the agreement  
23      between the State and the Counties on how refunds  
24      are to be paid, this court also orders the State to  
25      process the refunds with all due haste and to do

1 everything within its power to expedite the  
2 timeline.

3 Finally, as requested by Sound Transit, this  
4 order has no preclusive effect on the question of  
5 interest involving future issues that this court may  
6 need to address in other hearings.

7 So I have seen the original order here. And  
8 let me ask you, Ms. Moran, as counsel at this point  
9 for the State, is there a reason why the timeframe  
10 cannot be narrowed to not later than 60 days rather  
11 than 120?

12 MS. MORAN: Your Honor, the most collapsed  
13 time would be 90 days. The contractor needs a  
14 minimum of 90 days. And our contractor can  
15 stipulate to the 90 days. So the idea is that they  
16 need at least 30 days' lead time. And then it would  
17 probably take them 60 days to actually get the  
18 process going. So it can be completed in 90 days.  
19 And we billed for 120 days, then, just so if any  
20 contingency came up, we would be able to be in  
21 compliance with the court's order.

22 THE COURT: So let me just make sure I  
23 understand this. So it's your expectation that it  
24 will be done within the 90 days and not the 120  
25 days?

1 MS. MORAN: That is correct.

2 THE COURT: Let me ask all of you in regard to  
3 the question of discovery that we had last week:  
4 Can you tell me whether or not you've come up with a  
5 timeline by which dispositive motions will be heard?

6 MR. KLAUSER: Well, Your Honor, we have been  
7 busy since we spoke to you last in court. We have  
8 had discussions with opposing counsel, Sound  
9 Transit, that we'll be getting right on it next  
10 between our full schedules. So we appreciate the  
11 court's offer to be available to adjudicate any  
12 possible glitches in the discovery process. But  
13 we'll get on it right away now that this has been  
14 concluded, Your Honor.

15 THE COURT: What I'd like to do, counsel, is  
16 given that you did not come up with a day, I'll just  
17 impose one. If you need it adjusted, I'll adjust  
18 it. But I believe you need some timelines to shoot  
19 for. I did grant the time for cutoff of discovery  
20 to August 20th. But I believe the deadline for  
21 hearing dispositive motions should be September  
22 27th. If you need an adjustment because of  
23 something that comes up in discovery, be assured I'm  
24 willing to give you some extension. But frankly I  
25 feel if I don't hold everyone to a schedule that



1       this case is going to slip. And, you know, I don't  
2       want that to happen.

3               MR. KLAUSER: What day did you say? I didn't  
4       hear down here.

5               THE COURT: Dispositive motions will be heard  
6       no later than September 27.

7               MR. KLAUSER: The twenty-seventh.

8               THE COURT: Perhaps it should be that they'll  
9       be filed by September 27th.

10              MR. ROWLEY: I'm scheduled to be out of town  
11       for the week of the twenty-seventh. We can file,  
12       but it's hard to argue without being here.

13              THE COURT: I'm going to go ahead and enter  
14       that order. I'll make the changes at this point.  
15       Is that date one that everyone can live with? I'll  
16       also go ahead and authorize the refunds to be  
17       distributed immediately. I'll sign that order.

18              Are there any questions before we conclude  
19       this hearing?

20              MR. LAWRENCE: Just for clarification, when  
21       you enter the order on the twenty-seventh date for  
22       filing motions, will that also include the language  
23       Your Honor read by the interest issue not having to  
24       take precedence with respect to Sound Transit? I  
25       just wanted to make that clear for the record. And

1 I can either order the transcript, or we can put it  
2 in that order. That might be helpful for future  
3 proceedings.

4 THE COURT: Well, Mr. Lawrence, you proposed  
5 an order. And I'm happy to enter that particular  
6 order in regard to this decision not having an  
7 effect on other issues.

8 MR. LAWRENCE: That would be perfect, Your  
9 Honor.

10 THE COURT: What I'd like to simply do is  
11 modify the order that indicates that it's not  
12 binding on Sound Transit or any other matter or  
13 party just because there are still a number of other  
14 entities involved.

15 Okay, counsel, I have three orders, and I have  
16 signed the original order establishing the terms for  
17 the refunds of the local vehicle licensing fees and  
18 gross weight vehicle fees. And I will ask my  
19 bailiff to make copies for each one of you as well  
20 as any member of the media if you're interested in  
21 copies of the agreement.

22 Given that there are no other matters, this  
23 hearing is concluded.

24 (Whereupon the hearing in if above entitled  
25 matter was concluded at 1:44 PM.)